

Comment Submittal on the Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network

A Proposed Rule by the [Federal Communications Commission](#) on 09/21/2016

Comments are due on or before October 21, 2016 and reply comments are due on or before November 21, 2016.

Comments Written by: **Dr. Michael Myers**
Independent Consultant
September 23, 2016

Abstract

FirstNet radio access network as provided under the Middle Class Tax Relief and Job Creation Act of 2012, as well as on the Commission's implementation of the specific statutory standards by which it is obligated to evaluate State opt-out applications.

Summary

The following document outlines comments in regards to the jurisdiction of the Commission and its approval process for any State that wishes to Opt-Out of FirstNet. In highlight, there are misinterpretations of the law as to what is expected for the given timeframe of 180 days; and the approval process needs to be adjusted for a competitive approach between a State Opt-Out and FirstNet itself.

Responses

14. As an initial matter, we observe that the Public Safety Spectrum Act does not contemplate that “small governmental jurisdictions” would be directly authorized to serve as operators of their own 700 MHz public safety broadband networks. Rather, the Act charges a single entity, FirstNet, with constructing, operating, and maintaining the NPSBN on a nationwide basis. Accordingly, the requirements the NPRM proposes or considers for the combined 700 MHz public safety broadband spectrum—in which FirstNet will operate on a nationwide basis—will not directly affect a substantial number of small entities. The absence of a direct effect on a substantial number of small entities suggests that it is not necessary to prepare a regulatory flexibility analysis in connection with these proposed requirements.

Comment: Clarification needs to be applied to the use “the Act charges a single entity, FirstNet, with constructing, operating, and maintaining the NPSBN on a nationwide basis.” This is not a true statement. The law states the following:

SEC. 6202. PUBLIC SAFETY BROADBAND NETWORK.

*(a) ESTABLISHMENT.—The First Responder Network Authority **shall ensure the establishment of a nationwide, interoperable public safety broadband network.***

It can therefore be established that the law only specifies the “FirstNet” “shall ensure the establishment of a nationwide network” – the law does not state that FirstNet is “charged” with the right to construct, FirstNet is only granted a provision of oversight to “ensure” the construction of the network. A State may feel the need to Opt-Out of which would mean the State will be in “charge” of its own deployment. In fact, the “FirstNet” organization, inclusive of the 15-member Board, sits only in the capacity of an oversight position to insure the NPSBN is delivered on a nationwide basis, as illustrated in Sec. 6204 (b)(1) below. The law does not “charge” FirstNet with “constructing, operating, and/or maintaining” anything physical in nature that pertains to the Public Safety Broadband Network. Although, the law does not specify that FirstNet cannot create an organization either (absence of law), therefore it can be interpreted that FirstNet could develop such a plan as long as it meets the constraints forced upon it through Subtitle B, but you should note that Subtitle B only applies to FirstNet and not a State entity.

To further clarify the law designates “FirstNet” as an independent entity which defies the Federal Acquisition Requirements that have been mandated on FirstNet.

SEC. 6204. ESTABLISHMENT OF THE FIRST RESPONDER NETWORK AUTHORITY.

(a) ESTABLISHMENT.—There is established as an independent authority within the NTIA the “First Responder Network Authority” or “FirstNet”.

SEC. 6206. POWERS, DUTIES, AND RESPONSIBILITIES OF THE FIRST RESPONDER NETWORK AUTHORITY.

(b) DUTY AND RESPONSIBILITY TO DEPLOY AND OPERATE A NATIONWIDE PUBLIC SAFETY BROADBAND NETWORK.—

*(1) IN GENERAL.—The First Responder Network Authority shall hold the single public safety wireless license granted under section 6201 and take **all actions necessary to ensure the building, deployment, and operation of the nationwide public safety broadband network**, in consultation with Federal, State, tribal, and local public safety entities, the Director of NIST, the Commission, and the public safety advisory committee established in section 6205(a)*

Under this context a State would be considered a smaller entity than a nationwide FirstNet operator, therefore a State would be classified as a “Small Entity”; the term is subjective and open to interpretation. Regardless, we must not get enthralled in the clarification of anything smaller than a State driven single entity to operate a statewide network. States will be naturally limited to the geographic boundaries and legislative converge within its own constituent basis of applied laws, thus are bound by State law, State Constitutions, and subsequently the voting base of its legislative process.

It should be noted that the law is broken into two distinct sections when applying the actionable scope of responsibility as described in the act.

For example: you will notice that Subtitle B addresses only the First Responder Organization and the Board – or FirstNet. This section specifically addresses the rules laid out for FirstNet – not a State – through the federal legislative process. It isn’t until Subtitle C of the law that we see any of the rules applied to the State, thus applying the 10th Amendment of the Constitution.

*The **Tenth Amendment (Amendment X)** to the United States Constitution, which is part of the Bill of Rights, was ratified on December 15, 1791. It expresses the principle of federalism, which strictly supports the entire plan of the original Constitution for the United States of America, by stating that the federal government possesses only those powers delegated to it by the United States Constitution. All remaining powers are reserved for the states or the people.*

It can therefore be interpreted that any clarification of “small entity” would only be applied within the context of FirstNet’s nationwide objectives, and not the State. The same can be said for all the following inherent statute requirements laid out in Subtitle B, such as FirstNet’s reach and control outside of Subtitle B; or the powers, duties and responsibilities of FirstNet (not the State); the initial funding requirement for FirstNet; self-sustainment requirement for FirstNet; the use of collected fees and restrictions on the use of revenue apply only to FirstNet; direct offering of commercial services as applied to FirstNet -- not the State.

As a demonstration of State mandates, in Subtitle B, the State, not FirstNet, is granted the ability to use revenue if specifically delivered via a public private partnership. (Sec. 6302. State and Local Implementation (g)(1)) This statement can conclude that FirstNet cannot use the Public Private Partnership method, nor the use of the revenue, but the actions of FirstNet to date demonstrate otherwise. I believe that the interpretation of the law, by FirstNet, has concluded that all of sections 6201 through 6302 apply to their mandate, thus is being voiced to all, when in fact 6201 applies to FirstNet and 6302 applies to the State.

Subtitle B—Governance of Public Safety Spectrum

Sec. 6201. Single public safety wireless network licensee.

Sec. 6202. Public safety broadband network.

Sec. 6203. Public Safety Interoperability Board.

*Sec. 6204. Establishment of the **First Responder Network Authority**.*

*Sec. 6205. Advisory committees of the **First Responder Network Authority**.*

*Sec. 6206. Powers, duties, and responsibilities of the **First Responder Network Authority**.*

*Sec. 6207. Initial funding for the **First Responder Network Authority**.*

Sec. 6208. Permanent self-funding; duty to assess and collect fees for network use.

Sec. 6209. Audit and report.

Sec. 6210. Annual report to Congress.

Sec. 6211. Public safety roaming and priority access.

Sec. 6212. Prohibition on direct offering of commercial telecommunications service directly to consumers.

Sec. 6213. Provision of technical assistance.

SEC. 6302. STATE AND LOCAL IMPLEMENTATION.

The law does not address the State until we get to Subtitle C, where as the only real requirements put upon the State is the need to get its approval of the State's "alternative plan" from the Commission and apply for the grant with the NTIA (once the Commission has granted its approval). The law does not address any requirements that are put upon the State, such as establishment of committees; restrictions on the use of revenue; restrictions on its commercialization of the network; nor the requirement to define "small entity", these are items required for FirstNet, not the State. In fact, the law goes as far as indicating that the use of any revenue made possible through the State's deployed "Opt-Out" solution can be derived for State purposes if performed through a "Public Private Partnership" (P3). (Sec. 6302 (g)(1) below)

Subtitle C—Public Safety Commitments

Sec. 6301. State and Local Implementation Fund.

Sec. 6302. State and local implementation.

Sec. 6303. Public safety wireless communications research and development.

SEC. 6302. STATE AND LOCAL IMPLEMENTATION.

(g) PROHIBITION.—

*(1) IN GENERAL.—A State that chooses to build its own radio access network shall not provide commercial service to consumers or offer wholesale leasing capacity of the network within the State except directly through **public-private partnerships** for construction, maintenance, operation, and improvement of the network within the State.*

15. The NPRM seeks comment on when State Governors will be required to notify FirstNet, NTIA, and the Commission if they wish to opt out of the NPSBN. Specifically, the NPRM proposes to require States electing to opt out of the NPSBN to file a notification with the Commission no later than 90 days after the date they receive electronic notice of FirstNet's final proposed plan for the State. The NPRM also seeks comment how notice should be provided and on whether an entity other than a State Governor, such as the Governor's designee should be permitted to complete this filing requirement.

Comment: It is recommended that only the State Governor make the decision to Opt-Out or Opt-In. The impact of either solution will have lasting impacts on the legislative, economic and social development within a given State; such impacts can only be under the guidelines and policies of a sitting Governor. Imperative to the timeline associated with delivering the PSBN solution is the requirement to make quick decisions. If a State were to select a legislative process in approving any solution this would introduce a number of detrimental impacts, but most importantly the timely delivery of the PSBN solution. Any alternative approval process to the Governor would introduce potential conflicts on the timely arrival of the network, for the State, that may impact life saving measures and tools required. It is therefore recommended that a formal notice made by the Governor be adequate.

A question to the NPRM would be: who will approve the FirstNet solution? Whoever approves the FirstNet solution should be in line to approve the State solution, and vice versa, because the only competitive practices are the application of competing business models between a State P3 Opt-Out and the FirstNet nationwide carrier arrangement. The tactical and technical solution of broadband is the same for either approaches. Therefore, it's imperative that oversight and approval be made from the Commission. Which begs to be questioned, why does the NTIA have oversight of the funding for FirstNet and the approval of State grants -- especially if FirstNet is considered to be a competing business model to the State's effort? Maybe the grant application and funding solution needs to be allocated to the Commission rather than the NTIA? It would be wise given that it is the Commission that allocates the spectrum and approves the State Opt-Out plans. Why should the NTIA, who has no say in approving the State's Opt-Out plan, be administering the spectrum lease arrangement with a State when it is in a competitive framework with the same State? I would suggest that if a State has its plan approved by the Commission; then the Commission should allocate the spectrum lease arrangement directly with the State; as well as apply its grant funding.

16. The NPRM seeks comment on the Act's provision that States choosing to opt out have 180 days to "develop and complete" requests for proposals (RFPs). In particular, the NPRM seeks comment on what showing is sufficient to demonstrate that a State has "completed" its RFP within the 180-day period. The NPRM further proposes that, if a State notifies the Commission of its intention to opt out of the NPSBN, the State will have 180 days from the date it provides such notification to submit its alternative plan to the Commission. The NPRM proposes to treat a State's failure to submit an alternative plan within the 180-day period as discontinuing that State's opt out process and forfeiting its right to further consideration of its opt-out request. The

NPRM seeks comment on what an opt-out State should be required to include in its alternative plan for the plan to be considered complete for purposes of the Commission's review.

Comment: It is observed that if a State makes the decision to Opt-Out, and submits a formal letter from the Governor, then that should suffice. As for the 180 days for the State based RFP I would think that an Executive Summary of the proposed business case be enough for the Commission to evaluate, but it should be noted that the NPRM's request does not address the 180-days as written in the law and, in fact, is not fully interpreting its intent. For the intent of clarifying an adequate process, I would imagine that the process associated with any approval should commence under a multi-step analysis of the States objective.

For example, step one would be to submit an Executive Summary of the State's overall business plan outlining initial information that the Commission could use to make a judgement call as to whether or not the State is moving in the right direction. Step two would be deliverables that layout the State's plan, such as an Operations Plan, Technology and Vendor Roadmap, Revenue Projections, Market Analysis, Investor Terms and Conditions, and Interoperability Plan. Step 3 would be the submission of the overall design, roadmap of technology introduction, deployment schedule and construction timeline.

Initiating this three stage process would enable multiple points of intercession, whereas the NTIA can provide feedback and corrections, and the State can make corrections and/or reintroduce changes. Once the State has declared its desire to Opt-Out, trying to administer a concrete timeline is unnecessary and will only constrict the States ability to be successful in its deployment.

As was suggested above, the NPRM may be misinterpreting the law as written. The law states a framework of 180-days for an Opt-Out State to script, advertise and award an RFP. The law does not say that the State must have a fully completed plan for construction, maintenance and operation of the radio access network within 180-days, just a completed RFP. If the State chooses to perform a typical Opt-Out bonded broadband program, funded by taxpayer money, then the risk of RFP timeframe falls upon the State. If a State develops an RFP asking for a P3 solution, then 180-days will suffice. As was the case for [New Hampshire](#), and now [Alabama](#), the scope of the RFPs called for a P3 solution to the statewide deployment of Public Safety Broadband. The timeframe associated with their scripting, advertisement and award fell well within the 180-day timeframe.

SEC. 6302. STATE AND LOCAL IMPLEMENTATION.

*(B) STATE REQUEST FOR PROPOSALS.—Not later than 180 days after the date on which a Governor provides notice under subparagraph (A), **the Governor shall develop and complete requests for proposals** for the construction, maintenance, and operation of the radio access network within the State.*

The approval process written into the law only talks about what information is required following the State's RFP process, whereas the State would have awarded the solution to an

entity that submitted a proposal for the State's solution. It is therefore interpreted that the physical plan approval process does not actually fall under any timeline, thus a timeframe of 180-days is irrelevant per the law for the approval process and is only relevant to the framework of the RFP process.

SEC. 6302. STATE AND LOCAL IMPLEMENTATION.

(C) SUBMISSION AND APPROVAL OF ALTERNATIVE PLAN.— (i) IN GENERAL.—The State shall submit an alternative plan for the construction, maintenance, operation, and improvements of the radio access network within the State to the Commission, and such plan shall demonstrate—

(I) that the State will be in compliance with the minimum technical interoperability requirements developed under section 6203; and (II) interoperability with the nationwide public safety broadband network.

Given the intent of the law, as written, it is encouraged that once a State makes its “Opt-Out” decision, and its subsequent award of an RFP, the mandate for 180-days be maintained – 180 days is a reasonable time period for an Opt-Out P3 RFP in this context. It is interpreted that the approval process between the given State and the Commission is not under any legal timeline constraints, therefore, a timeline for any detailed design or implementation schedule falls upon the purview of the State and not FirstNet or the NTIA. Any context of federally enforced timeframe for a detailed design and schedule of a State's plan could be construed as meddling outside the law or a modification of Sec. 6302(B) (above). But, the State must still, per the law, submit its second stage deliverables for approval under a reasonable timeframe as to align with the overall nationwide implementation of the First Responder Public Safety Broadband Network.

17.a. The NPRM seeks comment on whether States should be required to file their alternative plans in PS Docket No. 16–269, and the scope and types of information that must be included in the submission.

Comment: The law does not specify a requirement for a State to submit an “alternative plan” within any given timeframe. When the State does submit its alternative plan for approval, there needs to be a framework for the NTIA to use in comparison of the primary objectives as laid out in the law (highlighted below). The nature of the NTIA's approval is to insure that the primary objectives are met within the law.

SEC. 6302. STATE AND LOCAL IMPLEMENTATION.

*(C) SUBMISSION AND APPROVAL OF ALTERNATIVE PLAN.— (i) IN GENERAL.—The **State shall submit an alternative plan for the construction, maintenance, operation, and improvements** of the radio access network within **the State to the Commission**, and such plan shall **demonstrate—***

*(I) that the State will be in compliance with the **minimum technical interoperability** requirements developed under section 6203; and (II) **interoperability with the nationwide public safety broadband network.***

For specific needs to be addressed, that may be characteristic of one State, further objectives should be administered by the Commission, but only in the way that it enhances the chances of success for the State's plan. Constrictions should only be made on a State-by-State basis if there is an impending technical problem that may exist between the State plan and the nationwide plan, such as fast remediation of one's vendor solution over another; or the fast approval process of a new technology and a vendor's solution. No restrictions should be made if the State's plan is based on a competitive comparison between the State's business plan and the FirstNet business plan. Any State that chooses to Opt-Out, its business plan should maintain priority over any FirstNet business plan as defined within State boundaries, i.e. business case conflict in use of customers, rights of way, rights of usage, defined users, revenue, billing practice, etc...

17.b. The NPRM also seeks comment on whether States should be allowed to file amendments or provide supplemental information to the plan once it is filed with the Commission and prior to the Commission's decision. Should Commission staff be permitted to discuss or seek clarification of the alternative plan contents with the filer?

Comment: Absolutely. A cooperative solution should be the priority for any State based solution. There should never be a "competitive" action between FirstNet and a State in deployment of either-or solution. The FirstNet solution should be viewed as a method to deploy and maintain the nationwide solution for multi-regional purposes and thus operate on a differing level of requirements surrounding multi-regional purposes. As it pertains to physical deployment the FirstNet network would also act as a filler for those States that wish to Opt-In, mainly due to financial constraints, resource constraints, or any other constraint that the State may be facing, therefore it is encouraged that cooperation with FirstNet's plan be considered to achieve its goals of deployment and coverage.

For any State that wishes to Opt-Out, then cooperation between the NTIA and FirstNet needs to be based on inclusion, yet not intrusive upon the State's overall goal. FirstNet in this case would be the subservient to any State solution and thus act as a backup to any State plans that do not meet approval, or fail in the future.

17.c. If a plan is deemed sufficient for our purposes before a State awards a contract pursuant to its RFP, should the Commission condition approval on substantial compliance with the approved plan under the awarded contract, or should this be addressed by NTIA under its "ongoing" interoperability evaluation?

Comment: The Commission should deem any plan as sufficient if its meets the basic guidelines laid out in the law. There needs to be more clarification on what is meant by "plan" though. If the State moves forward with a Public Private Partnership that calls for a fully funded model; that specifies a requirement to build per the technical requirements of FirstNet; and the State calls for full adherence to the interoperability requirement of FirstNet, then the plan should be authorized to move to the next stage in the ongoing approval process.

A question to the NPRM would be: who will approve the FirstNet solution? Whoever approves the FirstNet solution should be in line to approve the State solution, and vice versa, because the only competitive practices are the application of competing business models between a State P3 Opt-Out and the FirstNet nationwide carrier model. The tactical and technical solution of broadband is the same for either approaches. Therefore, it's imperative that oversight and approval be made from the Commission. Which begs to be questioned, why does the NTIA have oversight of the funding for FirstNet and the approval of State grants -- especially if FirstNet is considered to be a competing business model to the State's effort? Maybe the grant application and funding solution needs to be allocated to the Commission rather than the NTIA? It would be wise given that it is the Commission that allocates the spectrum and approves the State Opt-Out plans. Why should the NTIA, who has no say in approving the State's Opt-Out plan, be administering the spectrum lease arrangement and the grant funding with a State when it is in a competitive framework with the same State? I would suggest that if a State has its plan approved by the Commission, then the Commission should allocate the spectrum lease arrangement directly with the State, and then approve its use of the grant allocations.

For the approval process pertaining to FirstNet and the NTIA, primarily for the grant application process if the State decides to apply for it, must be an on-going effort through an indefinite cycle of compliance as to maintain its maturity with the technology curve as to subsidize further grant funding for any modifications that integrates between the State's network and the nationwide solution of FirstNet. Remember, the law states that a State has to submit an RFP in 180-days, the plan that is initiated within that RFP needs to be a balanced approach with the development of the technical and interoperability requirements for both the nationwide and the State solutions. Therefore, the Commission, and the State, should both expect a multi-point system of checks and balances through the approval process. A complete network can be built, meet standards and be fully operational, but that doesn't guarantee it can be maintained and operated efficiently over the coming years; the same would go for FirstNet's network. Checks and balances will always be an essential part of insuring the solution meets the needs of Public Safety for the foreseeable future. Plus, technology changes over time and a need to have compliant measures put in place to insure technical adherence and interoperability is maintained through the progression of the network.

18.a. The NPRM also seeks comment on who should have access to and the ability to comment on State alternative plans. In this regard, the NPRM seeks comment on the extent to which State alternative plans may contain confidential, competitive, or sensitive information or information that implicates national security. Should State plans be treated as confidential, with public notice limited to identifying which States have elected to opt out and filed an alternative plan? If so, should the Commission require such filing, and should the public be given an opportunity to comment on them?

Comment: Any information about a network, its operations, its maintenance schedule, its use of technology, and its cyber security concerns, have always been an issue when it comes to

securing confidential information. The technical adoption of the network is based on commercial standards, so that is not an issue. How the technology is used and how it is adopted may be sensitive, therefore there should be restrictions on its transparency when necessary. Such initiatives of isolating sensitive from non-sensitive material is not a new topic and has been administered on many occasions throughout many different areas of industry. Both private and governmental entities have successfully deployed classified and non-classified solutions in unity for many years, thus the requirements for this should be no different. As for a State's desire to Opt-Out, or Opt-In, should be made public given its nature of affecting constituents and taxpayers. Any specific information, such as technical specifics for a given site, its nature of use, the traffic it controls can remain confidential. A State's business plan and its operational framework should be transparent. After all, confidentiality would not exist if it did not have non-confidential information present and vice versa.

It should be anticipated that sensitive information control measures would be put in place as part of the States complete plan. Whether physical barriers or isolated technical capabilities, i.e. fixed virtual private networks, intrusion detection solutions, should be an inherent design of the overall plan – both State and FirstNet. The existence of private, commercial and government based solutions should be expected, thus designed as part of the overall business plan presented by either FirstNet or the State, this would include the use of classified facilities sitting adjacent to non-classified facilities for commercial services; as well as establishing clearance facilities for applicable confidential ratings in applying access levels for employee personal.

All entities, whether commercial, private or government, should be physically separated in the technical needs within the overall broadband architecture and topology, i.e. separate fiber networks, individual virtual private networks, managed virtual networks or shared network architectures. But, the baseline for the hardened infrastructure and facilities should be augmented to meet a combined network approach, i.e. same fiber right of ways, same access methodologies, shared access, combined billing applications as needed. In the end, it's the hardened infrastructure and coverage areas that sets this network apart from the typical commercial network – the adoption of technology is the same only separated through the broadband packet and priority scheme in the solution.

18.b. If State plans were filed publicly, would the Commission's existing rules allowing parties to request confidential treatment for their filings provide adequate protection of sensitive information? Alternatively, given the likelihood of sensitive information and the limited scope of the Commission's review of State plans under section 6302(e)(3)(C)(i) of the Act, should the Commission limit the parties that are entitled to review and comment on such plans? Should comment be limited to specific issues?

Comment: The adoption of classification ratings for any material deemed sensitive should be taken in stride. The completed plan for both the State and FirstNet, should be inclusive of a classification and clearing house for control of sensitive information and access throughout all layers of user implementation. Some areas of confidential information may be deemed very

sensitive in the eyes of one individual, but not in the eyes of another; therefore, the State's plan, and FirstNet's plan, should be inclusive of such needs and requirements for all parties that may use the network.

For example: commercial entities will have requirements for insuring the safe storage and access controls to private and personal information, as well as revenue controls; for a Government agency it may be a clearance house of access controls adapted to individual employees as to how much information they can have access too. Each entity will have its own needs and requirements thus the development of control points for sensitive information should be applied throughout all stages and areas of the overall solution. The adoption of sensitive protocols will remain an on-going exercise depending on the nature of the user. As for the initial deployment of a State's plan, or the FirstNet plan, a baseline design of controls should be administered through its hardening characteristic as well as the networks initial user entities, both private and public, with the notion that such controls would, could, and should be changed depending on the makeup of its user base of requirements and the advancement of the technology.

19.a. The NPRM also seeks comment on whether FirstNet and/or NTIA should be allowed access and the ability to comment to the Commission on State plans within a defined comment period. Assuming that FirstNet and NTIA are afforded a right to comment on State plans, should States have the right to respond to such comments?

Comment: Comments should be made available from any and all sources, so yes the FirstNet and the NTIA should be allowed to comment on any plans – as would any individual, private, commercial or government entity.

19.b. What rights, if any, should States have to review or comment on alternative plans submitted by other States?

Comment: Comments should be made available from any and all sources, so yes the FirstNet and the NTIA should be allowed to comment on any plans – as would any individual, private, commercial or government entity.

19.c. What other procedures are appropriate for the Commission's review of such plans? How can the Commission most appropriately ensure that it has heard all "evidence pertinent and material to the decision"?

Comment: It is recommended that the Commission utilize the standard approach, as this comment period uses, to collecting comments on each and every plan. Comments should be made available from any and all sources, so yes the FirstNet and the NTIA should be allowed to comment on any plans – as would any individual, private, commercial or government entity. The Commission should establish a fixed timed period for Responses and then, following the

closing date for comments, only consider further comments based on severity to overall outcome of success.

20. The NPRM proposes that each alternative plan submitted to the Commission should receive expeditious review. The NPRM proposes to establish a “shot clock” for Commission action on alternative plans to provide a measure of certainty and expedience to the process. The NPRM seeks comment on what an appropriate shot clock period would be.

Comment: If a State should decide to Opt-Out, then the 180-day cycle begins for its creation, release and award of the State’s RFP. As for the consolidation of the approved plan from the State on its responses to its RFP, there will be a number of unexpected variables that will impact the State’s alternative plan to FirstNet. For example: amount of industry resources available to propose solutions; amount of available contracting resources in the market; lead times for inventory; installation cycles that depend on market demand and the OEMs; and many other forces that will impact a State’s need to DBOM their solution. The broadband space is a battered space that has seen drastic reductions in available contracting companies and will require some recovery time to get up to par to what will be demanded in this new market. It is recommended that the NTIA and the Commission full grasp the impact of these external impacts when considering a State’s alternative plan and the time required to oversee a number of simultaneous deployments in multiple States.

21. The NPRM seeks comment on the standard against which alternative State plans will be evaluated, specifically with respect to the Act’s requirements that alternative plans demonstrate: (1) that the State will be in compliance with the minimum technical interoperability requirements developed under section 6203, and (2) interoperability with the nationwide public safety broadband network.

Comment: Reiterating the law’s requirement to establish a fixed standard of technical adherence, approved vendors, and interoperability should suffice. Although, what those standards are still needs to be defined and published in a way that a State’s alternative plan can follow. It is highly encouraged that the FirstNet Technical Advisory Committee establish those requirements as soon as possible, else the Commission risks the forced individual solutions of each and every State.

22. Under the first prong, the NPRM seeks comment on the utilization of RAN-related requirements specified in the minimum technical interoperability requirements. Specifically, the NPRM proposes that review under this prong would include requirements (1)–(3), (7)–(10), (20)–(25), (29), (39), (41)–(42) from the Board Report, as documented in Appendix B of the NPRM.

Comment: Define Prong. Reiterating the law’s requirement to establish a fixed standard of technical adherence, approved vendors, and interoperability should suffice. Although, what those standards are still needs to be defined and published in a way that a State’s alternative plan can follow. It is highly encouraged that the FirstNet Technical Advisory Committee

establish those requirements as soon as possible, else the Commission risks the forced individual solutions of each and every State.

23. Under the second prong, the NPRM proposes a broader view than the first prong in demonstrating “interoperability” with the NPSBN, but still limited to the RAN. In particular, the NPRM seeks comment on the role of the Commission to independently and impartially evaluate whether alternative plans comply with the interoperability related requirements established by FirstNet, and suggests that the Commission does not have the ability to impose network policies or interoperability requirements on FirstNet.

Comment: Define Prong. The definition of RAN is a Radio Access Network. The approach in defining such a solution is too generalized and needs to be further defined. As it stands today, a State that decides to Opt-Out to build its own RAN, is in fact building the entire ecosystem associated with a RAN, i.e. fiber transport, backhaul solutions, radio tower solutions, access solutions, traffic monitoring solutions, billing support engines, account management systems, inventory tracking systems, application support and datacenter solutions, and even maintenance schedules. All of these aspects and requirements are all considered part of a RAN solution.

Interoperability is also vague in its interpretation, but it is assumed by the term “interoperability” we are talking about specific radio communications between elements, units, and agencies that will utilize the broadband service no matter what’s its geographic location may be. If the term is being compared to systems and equipment, then the real term is integration, or integrated solutions. Given that the entire network will be based on Band 14 spectrum, then interoperability will be inherently achieved. The ecosystem design for application interoperability will be required, but only once the platform exist, under relevant standards, can the applications be developed and insured “interoperability” capabilities in its adoption. Insuring that handsets, applications and IoT (Internet of Things) are manufactured with Band-14 chipsets is another area of interoperable assurance.

Policies are an organizational tool used to create frameworks of procedures and guidelines that organizations can use to accomplish their defined mission. Being that an Opt-Out State will be in control of its own governance structure while executing its alternative plan, it will be inefficient for FirstNet to have any say in its operations – this may be applied vice versa as well. The mission of FirstNet, and its established policies, need not be created to conflict with State based solutions either.

24. The NPRM seeks comment on the view that if the Commission disapproves a plan, the opportunity for a State to conduct its own RAN deployment will be forfeited and FirstNet “shall proceed in accordance with its proposed plan for that State.”

Comment: Given the timeline associated with creating and deploying the entire Public Safety Broadband Solution, there will be ample time to isolate and develop alternative plans that fit the needs of individual States, especially those Opt-Out States. Any effort to try and create a

multi-state buildout will be faced with a daunting task of resources and tools available to support such an effort. It is theoretically in possible to create a simultaneous deployment covering multiple States. The political impact alone will force an expanded timeline due to each State's process of approvals and use of taxpayer money to help augment such an exercise.

It would be to the benefit of the Commission, the State, and the taxpayers that alternative solutions be developed on independent timelines associated with individual State requirements. The objective is to get an agreement on what is best for Public Safety, the State and the nationwide solution, but most importantly the local First Responders. It is therefore recommended that the statement of "shall proceed in accordance with its proposed plan for that State" is far reaching and beyond the Federal Governments reach to imply that it will intercede in a State's effort to build its public safety broadband solution.

25. The NPRM seeks comment on the view that the Commission's approval of a State opt-out plan as meeting the interoperability criteria in section 6302(e)(3)(C) of the Act would not create a presumption that the State plan meets any of the criteria that NTIA is responsible for evaluating under section 6302(e)(3)(D) of the Act.

Comment: If a State decides to Opt-Out, and the State's plan meets the requirements laid out in the law, and the Commission approves the plan, then the NTIA must approve grant allocations. If a State decides to apply for the grant allocations offered to the State in the law, then I do not see where the NTIA would be in a position to override anything that the Commission institutes, especially when it was the Commission that approved the release of spectrum to the First Responder Network Authority. By doing so the NTIA would risk the reassignment of the spectrum to the State per the FCC directly, which may be a better solution anyway. Contractually I do not see anything the NTIA could direct to the State outside of the Commissions oversight of the technical requirements and the interoperability standards.

It should be noted that the State that decides to Opt-Out does not have to apply for the grant allocation offered under the law that subsequently would be administered by the NTIA. If a State decides not to apply, then there will be no jurisdiction of the NTIA in the State's solution and thus only the approval of the Commission will be required. If a State decides to apply for the grant, then the NTIA should not be allowed to constrict a State's right to create its own solution, unless the State's solution for governance controls and operational controls are granted, by the State, to the FirstNet organization under the NTIA. In the end the overall theme is to create a robust infrastructure to support broadband.

26. The NPRM seeks comment on how the Commission should document its decisions to approve or disapprove State opt-out requests under the statutory criteria. Should it issue a written decision or order explaining the basis for each decision, or would it be sufficient to provide more limited notice of approval or disapproval in each case without a detailed explanation?

Comment: Some form of formal acknowledgment with an explanation and steps to obtain approval should be granted. Enough information should be garnered from the response so that the State can correct, respond and mitigate its conditions. The objective should not be to be at arms-length in the discussion, but rather inclusive as to meet each sides requirements.